

Complaint

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IN THE MATTER OF

McCAMBRIDGE & McCAMBRIDGE COMPANY, INC., DOING
BUSINESS AS EVERFRESH PRODUCTS COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2664. Complaint, Dec. 19, 1935—Decision, Feb. 20, 1936*

Where a corporation engaged in the manufacture and sale of certain forms of pharmaceutical preparations, including its "Everfresh Aspirin", made many unfair, exaggerated, false and misleading statements with reference thereto and the effect upon users thereof, including such assertions as that it gave better, quicker relief because "Everfresh", kept user free of tired spells, nerve ailments and other troubles, and was pure and therefore harmless, and taken as directed, soothed nerve tension at night and made sound sleep possible, and advised the taking of two tablets thereof with water three times a day for gripe; with capacity and tendency, through said representations, in disparagement of competitors, to mislead and deceive the public in buying its said product in reliance upon the truth of said various statements and to divert trade unfairly from or otherwise injure and prejudice customers:

Held, That such acts, practices and representations were all to the prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. Joseph A. Simpson*, trial examiner.

Mr. Joseph C. Fehr for the Commission.

Mr. Sol Shappirio, of Washington, D. C., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission, having reason to believe that McCambridge & McCambridge Company, Inc., a corporation trading and doing business as Everfresh Products Company, hereinafter referred to as respondent, has been and now is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, states its charges in that respect as follows:

PARAGRAPH 1. The respondent, Everfresh Products Company is a trade name employed by McCambridge & McCambridge Company, Inc., a corporation organized and existing under and by virtue of the laws of the State of Delaware with its principal place of business located in the city of Washington, District of Columbia at 12 L

Street, S. E. in said city. Said respondent is now, and for several years last past has been, engaged in the business of manufacturing certain forms of pharmaceutical preparations, one of which is "aspirin". Aspirin is made of a drug technically known as acetyl salicylic acid. The said respondent has named and designated its aspirin as "Everfresh Aspirin", which product respondent has offered for sale and sold in commerce between and among the different States of the United States and in the District of Columbia. Said respondent has caused and still causes said "Everfresh Aspirin" when so sold by it to be transported from its place of business into and through the various States of the United States and into and through the various parts of the District of Columbia to purchasers thereof located therein. There has been for several years last past and still is a constant current of trade in commerce in said product so manufactured by the respondent in the District of Columbia.

In the course and conduct of its business, as aforesaid, respondent is now and has been in competition with other corporations, firms and individuals engaged in the manufacture and sale of aspirin between and among the various States of the United States and in the District of Columbia, causing such aspirin when sold by them to be transported from their respective places of manufacture to purchasers thereof in States other than the States in which such aspirin is manufactured.

PAR. 2. In the course and conduct of its business as aforesaid, the respondent in soliciting the sale of and selling "Everfresh Aspirin" and for the purpose of creating a demand on the part of the consuming public for said product, now causes and for several years last past has caused advertisements, circulars and labels to be issued, published and circulated to and among the general public of the United States.

In said ways and by said means respondent makes and has made to the general public many unfair, exaggerated, false and misleading statements with reference to the therapeutic value of said "Everfresh Aspirin" and its effect upon the users thereof, a portion of which are as follows:

You will find this aspirin gives better, quicker relief because it is
Everfresh;

Keep Everfresh at hand and keep free of * * * tired-spells, nerve
ailments and other troubles;

It is pure—hence it is harmless;

For * * * grippe, take two tablets with water three times a day;

An Everfresh aspirin and a glass of hot milk soothes the nerve tension
at night, making sound sleep possible;

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PAR. 3. In and by said ways and means, respondent's representations are in disparagement of its competitors and have the capacity and tendency to, and are calculated to mislead and deceive the purchasing public into the belief that "Everfresh Aspirin" is better and gives quicker relief than ordinary aspirin; that said product relieves tired-spells and cures nerve ailments and other troubles; that it is pure and harmless; that said product is a cure for grippe when two tablets are taken with water three times a day; and that "Everfresh Aspirin" and a glass of hot milk soothes the nerve tension at night, making sound sleep possible and has a sedative and hypnotic effect; and causes said purchasing public to purchase said product in such belief, whereas in truth and in fact, "Everfresh Aspirin" is not better nor will it give quicker relief because it is "Everfresh" nor will said product relieve tired-spells or cure nerve ailments and other troubles, nor is it absolutely pure and harmless, nor will two tablets taken with water three times a day cure grippe, nor does said product when taken with a glass of hot milk soothe nerve tension and have a sedative and hypnotic effect, nor does respondent's product continue to remain fresh longer than any other aspirin or acetyl salicylic acid but will decompose within the usual time in which ordinary aspirin or acetyl salicylic acid will decompose. Said representations by respondent have the capacity and tendency to unfairly divert trade from or otherwise injure and prejudice respondent's competitors in interstate commerce.

PAR. 4. The above and foregoing acts, practices and representations of the respondent have been and are, all to the prejudice of the public and respondent's competitors, as aforesaid, and have been, and are, unfair methods of competition within the meaning and intent of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission, on the 19th day of December 1935, issued and served its complaint in this proceeding upon the respondent, McCambridge & McCambridge Company, Inc., a corporation, trading and doing business as Everfresh Products Company, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said Act. After the issuance of said complaint and the filing of said respondent's answer thereto,

a stipulation as to the facts was entered into between the respondent through its attorney, Sol Shappirio, Esq., and this Commission, subject to its approval, through its chief counsel, W. T. Kelley, Esq., in and by which stipulation it was agreed that the statement of facts contained therein might be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto; and in which stipulation it was provided that the Commission might proceed upon said statement of facts to make its report, its findings as to the facts (including inferences which it might draw from the said stipulated facts) and its conclusion based thereon and under its order disposing of the proceeding without the presentation of arguments or the filing of briefs; and the Commission having duly considered the same and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Everfresh Products Company (a trade name employed by McCambridge & McCambridge Company, Inc.), is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal place of business located in the city of Washington, District of Columbia, at 12 L Street, S. E., in said city. Said respondent is now, and for several years last past has been, engaged in the business of manufacturing certain forms of pharmaceutical preparations, one of which is "Aspirin". Aspirin is made of a drug technically known as acetyl salicylic acid. The said respondent has named and designated its aspirin as "Everfresh Aspirin", which product respondent has offered for sale and sold in commerce between and among the different States of the United States and in the District of Columbia. Said respondent has caused and still causes said "Everfresh Aspirin", when so sold by it, to be transported from its place of business into and through the various parts of the District of Columbia to purchasers thereof located therein. There has been for several years last past and still is a constant current of trade in commerce in said product so manufactured by the respondent in the District of Columbia.

In the course and conduct of its business, as aforesaid, respondent is now and has been in competition with other corporations, firms and individuals engaged in the manufacture and sale of aspirin between and among the various States of the United States and in the District of Columbia, said competitors causing such

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aspirin, when sold by them, to be transported from their respective places of manufacture to purchasers thereof in States other than the States in which such aspirin is manufactured.

PAR. 2. In the course and conduct of its business, as aforesaid, the respondent in soliciting the sale of and selling "Everfresh Aspirin" and for the purpose of creating a demand on the part of the consuming public for said product, now causes and for several years last past has caused advertisements, circulars and labels to be issued, published and circulated to and among the general public of the United States.

In said ways and by said means respondent makes and has made to the general public many unfair, exaggerated, false and misleading statements with reference to the therapeutic value of said "Everfresh Aspirin" and its effect upon the users thereof, a portion of which are as follows:

You will find this aspirin gives better, quicker relief because it is Everfresh;
Keep Everfresh at hand and keep free of * * * tired-spells, nerve ailments and other troubles.

It is pure—hence it is harmless;

For * * * grippe, take two tablets with water three times a day;
An Everfresh aspirin and a glass of hot milk soothes the nerve tension at night,
making sound sleep possible.

PAR. 3. In and by said ways and means, respondent's representations are in disparagement of its competitors and have the capacity and tendency to and are calculated to mislead and deceive the purchasing public into the belief that "Everfresh Aspirin" is better and gives quicker relief than ordinary aspirin; that said product relieves tired-spells and cures nerve ailments and other troubles; that it is pure and harmless; that said product is a remedy for grippe when two tablets are taken with water three times a day; and that "Everfresh Aspirin" and a glass of hot milk soothes the nerve tension at night, making sound sleep possible; and causes said purchasing public to purchase said product in such belief, whereas in truth and in fact, "Everfresh Aspirin" is not better nor will it give quicker relief because it is "Everfresh" nor will said product relieve tired-spells or cure nerve ailments and other troubles, nor is it absolutely pure and harmless, nor will two tablets taken with water three times a day cure grippe, nor does said product when taken with a glass of hot milk soothe nerve tension; nor does respondent's product continue to remain fresh longer than any other aspirin or acetyl salicylic acid, but will decompose within the usual time in which ordinary aspirin or acetyl salicylic acid will decompose. Said representations by respondent have the capacity and tendency to

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unfairly divert trade from or otherwise injure and prejudice respondent's competitors in interstate commerce.

PAR. 4. The above and foregoing acts, practices and representations of the respondent have been and are all to the prejudice of the public and respondent's competitors, as aforesaid, and have been, and are, unfair methods of competition within the meaning and intent of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued its complaint against the respondent, McCambridge & McCambridge Company, Inc., a corporation trading and doing business as Everfresh Products Company, charging it with the use of unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said act. Thereafter the respondent filed its answer to the charges set forth in the complaint, and on, to wit, the 14th day of February 1936, a stipulation as to the facts was entered into by and between the chief counsel of the Federal Trade Commission, subject to the approval of the Commission, and Sol Shappirio, Esq., counsel for respondent, wherein it was stipulated and agreed that the statement of facts thus stipulated might be taken as the facts in this proceeding in lieu of testimony in support of the charges stated in the complaint or in opposition thereto; and in which stipulation it was agreed that the Commission might proceed upon said stipulation of facts to make its report stating its findings as to the facts (including inferences which it might draw from the said stipulated facts), and its conclusion based thereon, and its order disposing of this proceeding without the presentation of argument or the filing of briefs; and the Commission having accepted and approved the said stipulation as to the facts and having made its findings as to the facts and its conclusion that the respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

Now, therefore, it is hereby ordered, That said respondent, McCambridge & McCambridge Company, Inc., a corporation trading and doing business as Everfresh Products Company, its officers, agents, servants, and employees, in the sale and offering for sale by

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it in interstate commerce and in the District of Columbia of its product called "Everfresh Aspirin", forthwith cease and desist from representing through advertisements in newspapers, magazines, or through circulars, labels, or any other form of printed matter, or by radio broadcasting, or in any other way or manner,

That its said product gives better or quicker relief than other forms of aspirin or acetyl salicylic acid; that it keeps the user thereof free from tired spells, nerve ailments and other troubles; that it is harmless because it is pure; that two tablets of said product taken with water three times a day is a remedy for grippe; or that one tablet of said product, when taken with a glass of hot water, will soothe the nerve tension at night and will make sound sleep possible, or from making any other similar representation or any representations of similar tenor or import;

And it is hereby further ordered, That the said respondent shall within 60 days from the date of the service upon it of this order file with this Commission a report in writing, setting forth the manner and form in which it shall have complied with this order.

Complaint

IN THE MATTER OF
UNITED DISTILLING COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2474. Complaint, June 28, 1935—Decision, Feb. 27, 1936*

Where a corporation engaged in the distilled spirits rectifying industry under permit of the Federal Alcohol Control Administration—

Featured its corporate name in which was included word "Distilling", on stationery and in advertising price lists and other printed matter, and on labels attached to bottles in which it sold and shipped its said liquors, notwithstanding fact it had never applied for a distiller's permit, was never authorized by the Government to produce any distilled spirits from the grain, and never did distill and never owned a still, but purchased in bulk from distillers and other rectifiers all of its distilled spirit requirements and rectified, blended or bottled such spirits for sale in bottles under its own brand names and, in some cases, those of its customers, and failed to give adequate notice that it was not an actual distiller, through phrase "Bottled by" and display of rectifying permit "R-15", printed thereon and blown in the glass, in view of unappreciated significance thereof, on part of dealer and consuming public;

With capacity and tendency to mislead and deceive dealers and purchasing public into belief that it was a distiller, and that the whiskies, gins and other alcoholic beverages sold by it were made and distilled by it from mash, wort, or wash by process of original and continuous distillation through continuous closed pipes and vessels until manufacture was completed, and with effect of so doing and of inducing dealers and purchasing public, acting in such belief, to buy said whiskies, etc., and thereby divert trade to it from competitors, who do not thus or otherwise misrepresent themselves as manufacturers by distillation of alcoholic beverages; to the substantial injury of substantial competition in commerce:

Held, That such practices, under the conditions and circumstances set forth, were to the prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. John W. Bennett* and *Mr. Charles F. Diggs*, trial examiners.

Mr. PGad B. Morehouse for the Commission.

Mr. Louis Weiland, of Cincinnati, Ohio, for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission, having reason to believe that United